No. _____

In the
Supreme Court of the United States of America

HUMBERTO HERRERA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On a Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

Petition for Writ of Certiorari

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Question Presented

Whether the Hobbs Act makes the robbery of any retail store that engages in interstate commerce a federal offense.

The Court expressly declined to delineate the scope of the Hobbs Act in *Taylor v. United States*, 136 S.Ct. 2074 (2016), and in *Stirone v. United States*, 361 U.S. 212 (1960). Notwithstanding *Taylor*'s intimations that the act may not apply to local, retail-store robberies like those charged in this case, the courts of appeals continue to maintain, just as before *Taylor*, that every retail-store robbery in the United States is a federal crime. This case squarely raises this important issue of federalism.

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Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

Humberto Herrera respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in *United States v. Humberto Herrera*, No. 17-13440, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

Opinion Below

The circuit court's unpublished opinion affirming the district court's exercise of federal jurisdiction over the local crimes charged in this case is appended. The district court made no express findings regarding its jurisdiction.

Basis for Jurisdiction

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). The court of appeals entered its decision on December 31, 2019. This petition is timely under Supreme Court Rule 13.1. As this Petition details, the district court lacked jurisdiction over the offense because the Hobbs Anti-Racketeering Act of 1946 does not make every retail-store robbery a federal offense. Believing otherwise, the district court purported to exercise jurisdiction under 18 U.S.C. § 3231, which confers jurisdiction on the district courts over all federal crimes. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291, which confers jurisdiction on the circuit courts over appeals from the district courts.

Provisions of Law Involved

The Hobbs Anti-Racketeering Act of 1946, 18 U.S.C. § 1951, "Interference with commerce by threats or violence," provides:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.
>
> (b) As used in this section—
>
> (1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.
>
> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.
>
> (3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.
>
> (c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

Title 18 U.S.C. § 924 provides, in pertinent part:

> (c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—
>
> (i) be sentenced to a term of imprisonment of not less than 5 years;
>
> (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and
>
> (iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

Statement of the Case

Over a few days in April 2016, Humberto Herrera, armed with a handgun, robbed the cash registers at a pizzeria, an auto-parts store, and a gas station in Miami-Dade County, Florida. Local police caught up with him shortly after he robbed the jewelry counter at a department store. The municipal police department that arrested Herrera works with one of thousands of federal "task forces" that, since the 1970s, have blurred the line between local and federal law enforcement. As a result, federal rather than state prosecutors indicted Herrera, alleging that he "did knowingly and unlawfully obstruct, delay, and affect commerce and the movement of articles and commodities in commerce" in violation of the Hobbs Act, 18 U.S.C. § 1951(a), by robbing the department store and the gas station. (The indictment also charged a violation of 18 U.S.C. § 924(c)(1)(A)(ii) in connection with each robbery, which imposes an additional prison term for committing a "crime of violence" with a firearm.) Later, the government brought identical charges for the pizzeria and auto-parts-store robberies.

After the district court denied Herrera's motion to dismiss the sentencing-enhancement counts, Herrera pleaded guilty to all four Hobbs Act charges and the government dismissed all but one of the § 924(c) enhancements. At Herrera's guilty plea, the parties stipulated to the legal conclusion that the robberies affected interstate commerce:

> Little Caesar's restaurant, Advance Auto Parts store, Race Trac gas station, and Kohl's department store purchase and sell products that travel in interstate and/or foreign commerce and the Defendant's actions during each of the robberies obstructed, delayed, and affected interstate commerce.

Appendix at A-2. Without making any express finding regarding its jurisdiction, the district court accepted the plea, adjudicated Herrera guilty, and sentenced him to 20 years in prison.

On appeal, Herrera relied on this Court's most recent Hobbs Act decision, *Taylor v. United States*, 136 S.Ct. 2074 (2016), to argue that the district court lacked jurisdiction because the Hobbs Act does not make every local, retail-store robbery a federal crime. *Taylor* held that the Hobbs Act applies to robberies "in which the defendant targets drug dealers for the purpose of stealing drugs or drug proceeds." *Id.* at 2082. The Court cautioned that its rationale did not necessarily apply "where some other type of business or victim is targeted." *Id.* Justice Thomas noted, however, that the majority offered no limiting principle that would exclude from the act's scope local robberies like those charged in this case:

> Although the Court maintains that its holding "is limited to cases in which the defendant targets drug dealers for the purpose of stealing drugs or drug proceeds," its reasoning allows for unbounded regulation. Given that the Hobbs Act can be read in a way that does not give Congress a general police power, we should not construe the statute as the Court does today.

Id. at 2087 (dissenting opinion).

The Eleventh Circuit affirmed the convictions, without mentioning *Taylor* or addressing Herrera's argument concerning the Hobbs Act's scope. The panel's rationale makes every retail-store robbery in America a federal offense:

> The stipulated facts in the factual proffer were sufficient to show that Herrera's robberies had at least a minimal effect on interstate commerce. The factual proffer established that each of the four businesses targeted by Herrera was engaged in the purchase and sale of products in interstate or foreign commerce. During each robbery, Herrera—using a firearm—took either cash out of the business's cash register or $33,000 worth of jewelry. Herrera thus deprived the businesses of income and inventory: a depletion of assets. This evidence is enough to demonstrate an effect on interstate commerce under the Hobbs Act.

Appendix at A-4–A-5. At least seven other circuits have likewise relied on pre-*Taylor* cases to reach the same conclusion using equivalent reasoning without even mentioning *Taylor*.

Reasons for Allowance of the Writ

Taylor v. United States, *supra*, expressly reserved ruling on whether the Hobbs Act makes every retail-store robbery in the United States a federal crime, but federal courts across the country ascribe no significance to that. They uniformly deem it settled that every such robbery violates the act. Reading the statute so broadly conflicts with this Court's observation that "[f]or nearly two centuries it has been 'clear' that, lacking a police power, 'Congress cannot punish felonies generally.'" *Bond v. United States*, 572 U.S. 844, 854 (2014) (quoting *Cohens v. Virginia*, 6 Wheat. 264, 428 (1821)). Yet, as this case shows, this Court's intimations have not prodded the circuit courts to reconsider whether Congress meant the Hobbs Act "'to effect a significant change in the sensitive relation between federal and state criminal jurisdiction.'" *Id.* at 858–59 (quoting *United States v. Bass*, 404 U.S. 336, 349 (1971)).

In opinions similar to Justice Thomas' *Taylor* dissent, many circuit judges have argued that the prevailing view violates basic tenets of federalism: "At the rate we are going, perhaps the day will come when the federal government will see fit to prosecute the robbery of a child's roadside lemonade stand because the lemons came from California, the sugar was refined in Philadelphia, and the paper cups were manufactured in China." *United States v. Jimenez-Torres*, 435 F.3d 3, 15 (CA1 2006) (Torruella, C.J., concurring). In fact, the *en banc* Fifth Circuit evenly split over the issue. *United States v. Hickman*, 179 F.3d 230 (CA5 1999).

Because, at least since *Stirone v. United States*, 361 U.S. 212 (1960), this Court has avoided delineating the Hobbs Act's scope, federal courts give the act an overly broad reach. Ironically, they read *Taylor* as support for exercising federal jurisdiction over other local crimes, like assault. This Court's intervention is necessary to correct that widespread error.

I. Despite this Court's intimations that the Hobbs Act may not make every retail-store robbery a federal crime, the circuit courts have not reconsidered their overly broad interpretation of the statute's reach.

Humberto Herrera pleaded gulity to robbing four shops, but his confession did not prove that he committed a federal crime. The Eleventh Circuit held otherwise because, like the other courts of appeals, it maintains that the Hobbs Act, 18 U.S.C. § 1951, confers federal jurisdiction over robberies having just a minimal, speculative effect on interstate commerce.

This Court's most recent Hobbs Act decision hinted that the circuit courts should reconsider whether the Hobbs Act's reach is that broad. *Taylor* considered whether "an outlaw gang called the 'Southwest Goonz'" violated the Hobbs Act by committing "a series of home invasion robberies targeting drug dealers in the area of Roanoke, Virginia." 136 S.Ct. at 2078. The Court rejected the petitioner's contention that proof that he targeted drug dealers did not establish that his conduct affected interstate commerce. *Id.* at 2081 ("[I]f the Government proves beyond a reasonable doubt that a robber targeted a marijuana dealer's drugs or illegal proceeds, the Government has proved beyond a reasonable doubt that commerce over which the United States has jurisdiction was affected."). The majority cautioned that *Taylor* did "not resolve what the Government must prove to establish Hobbs Act robbery where some other type of business or victim is targeted." *Id.* at 2082. However, as Justice Thomas pointed out in dissent, *Taylor*'s "reasoning allows for unbounded regulation" and gives "Congress a general police power." *Id.* at 2087.

Taylor's intimations that the Hobbs Act's scope may be limited failed to prod the circuit courts to reconsider their broad reading of the statute. Without so much as citing *Taylor*, the courts of appeals continue to rely on their pre-*Taylor* precedents to adjudicate

quintessentially local robberies having only a speculative, minute effect on interstate commerce. *See, e.g.*, *United States v. Hunter*, 932 F.3d 610, 614, 622–23 (CA7 2019) (affirming Hobbs Act convictions for robbing a grocery store, restaurant, and drug store because "the government only needs to show a *de minimis* effect on interstate commerce"); *United States v. Daniel*, 887 F.3d 350, 358–59 (CA8 2018) (affirming Hobbs Act conviction for robbing a local general store's cash register because the store sold "gasoline, liquor, and cigarettes" shipped between states); *United States v. Rose*, 891 F.3d 82, 84–86 (CA2 2018) (affirming a Hobbs Act conviction for robbery from a cash machine because "the required showing of an effect of interstate commerce is *de minimis*"); *United States v. Lopez*, 860 F.3d 201, 214 (CA4 2017) (affirming a conviction for robbing a brothel because "the jurisdictional predicate of the Hobbs Act requires only a 'minimal effect' on interstate commerce—including one 'so minor as to be *de minimis*'—and there is no requirement that the effect on commerce be intended"); *United States v. Buffis*, 867 F.3d 230, 234 (CA1 2017) (affirming a Hobbs Act conviction for extorting $4,000 from a brothel because the payment "minimally depleted the assets of an entity doing business in interstate commerce"); *United States v. Fredericks*, 684 F. App'x 149, 162 (CA3 2017) (affirming a Hobbs Act conviction for robbing a jewelry store because "the establishment that was robbed sold goods that traveled in interstate commerce," proving a "*de minimis* effect on interstate commerce"); *United States v. Davis*, 677 F. App'x 933, 935 (CA5 2017) (affirming a Hobbs Act conviction for stealing cigarettes from a gas station because "cigarettes, a highly regulated commodity, traveled in interstate commerce and, following the robberies, had to be replaced by cigarettes that were manufactured and shipped from other states"), *judgment vacated on other grounds,* 138 S. Ct. 1979 (2018).

The circuit courts, in fact, read *Taylor* to support a limitless view of federal criminal jurisdiction in general under the Commerce Clause. For example, in a case about an Amazon warehouse employee who beat up another because of the victim's sexual orientation, the Fourth Circuit reversed the district court's holding that it lacked jurisdiction. *See United States v. Hill*, 927 F.3d 188, 202 (CA4 2019). The majority interpreted *Taylor* to mean that Congress can regulate "violent conduct interfering with interstate commerce even when the conduct itself has a 'minimal' effect on such commerce." *Id.* at 199. The dissent disagreed, arguing that "the majority wrongly construed *Taylor* to read Congress' authority under the Commerce Clause as the unrestricted power to regulate all interference with individuals engaged in any ongoing commercial or economic activity." *Id.* at 221 (Agee, C.J., dissenting).

By applying the wrong jurisdictional test to the Hobbs Act, *Taylor* fueled the circuit courts' overly expansive conception of federal jurisdiction. For nearly 50 years, the first step in analyzing Congress' Commerce Clause enactments has been to assign a challenged law to one of three possible categories, depending on the purpose that its text reveals it to serve:

> The Commerce Clause reaches, in the main, three categories of problems. First, the use of channels of interstate or foreign commerce which Congress deems are being misused, as, for example, the shipment of stolen goods (18 U.S.C. §§ 2312–2315) or of persons who have been kidnaped (18 U.S.C. § 1201). Second, protection of the instrumentalities of interstate commerce, as for example, the destruction of an aircraft (18 U.S.C. § 32), or persons or things in commerce, as, for example, thefts from interstate shipments (18 U.S.C. § 659). Third, those activities affecting commerce.

Perez v. United States, 402 U.S. 146, 150 (1971) (holding that the Consumer Credit Protection Act is in the third category); *see Gonzales v. Raich*, 545 U.S. 1, 16–17 (2005) (holding that the Controlled Substances Act is in the third category); *United States v. Lopez*, 514 U.S. 549,

558–59 (1995) (holding that the Gun-Free School Zones Act is in the third category); *see also United States v. Morrison*, 529 U.S. 598, 609 (2000) (holding that the Violence Against Women Act's civil remedy is in the third category because it targeted "gender-motivated violence wherever it occurs (rather than violence directed at the instrumentalities of interstate commerce, interstate markets, or things or persons in interstate commerce)").

Taylor assumed—apparently because both parties did—that the Hobbs Act is a substantial-effects statute, but it is not. The hallmark of statutes regulating "those activities affecting commerce" is that their text expressly identifies the activity being regulated. The Consumer Credit Protection Act regulates "loan-sharking" because its text says so. *Perez*, 402 U.S. at 156; *see* 18 U.S.C. § 892(a) ("Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined ... or imprisoned ... ."). The Controlled Substances Act "regulates the production, distribution, and consumption" of certain drugs because its text says so. *Raich*, 545 U.S. at 26; *see* 21 U.S.C. § 841(a) (making it "unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense" certain drugs). The Gun-Free School Zones Act purported to regulate "'possess[ing] a firearm'" because its text said so. *Lopez*, 514 U.S. at 551 (quoting 18 U.S.C. § 922(q)(2)(A)).

The Hobbs Act's text does not regulate conduct affecting commerce but expressly protects "the instrumentalities of interstate commerce, interstate markets, or things or persons in interstate commerce," *Morrison*, 529 U.S. at 609, from racketeering. That is why *Taylor* failed to identify any activity affecting commerce in the Hobbs Act's text and just asserted that "the activity at issue" was "the sale of marijuana." 136 S.Ct. at 2080. The Hobbs Act does not regulate the sale of marijuana because it mentions neither selling nor marijuana.

II. This Court should clarify that the Hobbs Act protects the instrumentalities and movement of commerce from racketeering and does not reach local, retail-store robberies.

As Justice Thomas predicted, *Taylor*'s reliance on the substantial-effects analysis to resolve a jurisdictional challenge to a Hobbs Act conviction reinforced giving that act and other commerce statutes the broadest possible scope: "By applying the substantial-effects test to the criminal prohibition before us, the Court effectively gives Congress a police power." 136 S.Ct. at 2087 (dissent). It allowed the circuit courts to continue to read the act "as if it said 'whoever robs a business engaged in interstate commerce shall be fined hereunder or imprisoned for twenty years or both.' ... Obviously, this is not what the Hobbs Act states." *United States v. Miles*, 122 F.3d 235, 250 (CA5 1997) (DeMoss, C.J., concurring).

While *Taylor* purported to limit its holding "to cases in which the defendant targets drug dealers" as opposed to legitimate businesses, *id.* at 2082, it offered no principle to keep the lower courts from applying the statute to local robberies, like those charged in this case. The courts of appeals therefore continue to hold, just as before *Taylor*, that "the Hobbs Act's actual 'words in no way exclude prosecutions for single local robberies ... .'" *Daniel*, 887 F.3d at 358 (quoting *United States v. Farmer*, 73 F.3d 836, 843 (CA8 1996)). They maintain that even "'robberies from small commercial establishments qualify as Hobbs Act violations so long as the commercial establishments deal in goods that move through interstate commerce.'" *Id.* (quoting *United States v. Dobbs*, 449 F.3d 904, 912 (CA8 2006)). Following that approach, the Eleventh Circuit held that jurisdiction was established by Herrera's stipulation that the stores he robbed "purchase and sell products that travel in interstate and/or foreign commerce." Appendix at A-2.

While no circuit court has held that the Hobbs Act does not reach every robbery of a business, Justice Thomas is not alone in questioning whether the act can have such broad reach. The *en banc* Fifth Circuit, in fact, was unable to decide a case indistinguishable from this one—it involved robberies of an AutoZone auto-parts store, a Subway sandwich shop, two Church's Chicken locations, a Dairy Queen, and a Hardee's—because the court evenly divided over whether the "prosecutions exceeded Congress's authority ... ." *United States v. Hickman*, 179 F.3d 230, 231 (CA5 1999) (*en banc*) (Higginbotham, C.J., dissenting). Other federal appellate judges likewise view the prevailing interpretation of the act as incompatible with our federalism and invite this Court to correct it. *See Miles*, 122 F.3d at 250 (DeMoss, C.J., concurring); *Jimenez-Torres*, 435 F.3d at 15 (Torruella, C.J., concurring).

The Hobbs Act's text directly protects "the instrumentalities of interstate commerce ... or persons or things in commerce." *Perez*, 402 U.S. at 150. Accordingly, it is in *Perez*'s second category of statutes—just as § 659, which protects interstate commerce from theft, is. *See id.* Both protect the *movement* of goods from state to state—a paradigmatic federal concern. *See Morrison*, 529 U.S. at 617–18 ("The Constitution requires a distinction between what is truly national and what is truly local."). Just as § 659 protects the movement of goods from thieves, the Hobbs Act protects "commerce or the movement of [goods] in commerce" from racketeers. *See United States v. Elders*, 569 F.2d 1020, 1023 (CA7 1978) ("The Hobbs Act, enacted to cope with the problem of racketeering, 'the levy of blackmail upon industry,' was intended to eliminate interference with the flow of interstate commerce.").

Congress passed the Hobbs Anti-Racketeering Act of 1946 to overturn *United States v. Local 807 of Int'l Brotherhood of Teamsters etc.*, 315 U.S. 521 (1942), which interpreted the

Anti-Racketeering Act of 1934. *See United States v. Enmons*, 410 U.S. 396, 402 (1973). *Local 807* concerned members of a New York City chapter of the Teamsters union convicted under the 1934 act for waylaying commercial trucks making deliveries into the city. The Teamsters demanded payment for completing the deliveries and returning the trucks, claiming that only union members could legally perform that work in the city. 315 U.S. at 525–26. This Court considered whether the union members' demand for payment from truck owners who refused the union's offer to make deliveries was an accepted labor practice or racketeering. Finding "[a]ccepting payments even where services are refused" to be an accepted union activity, the Court held that the jury was misinstructed and reversed the convictions. *Id.* at 535, 539. "The doubtful case arises where the defendants agree to tender their services in good faith to an employer and to work if he accepts their offer, but agree further that the protection of their trade union interests requires that he should pay an amount equivalent to the prevailing union wage even if he rejects their proffered services." *Id.* at 534.

"Congressional disapproval of this decision was swift." *Enmons*, 410 U.S. at 402. The Hobbs Act was passed "to shut off the possibility opened up by the *Local 807* case, that union members could ... exact payments from employers for imposed, unwanted, and superfluous services." *Id.* at 402–03. It protects the instrumentalities and movement of commerce—like commercial trucks delivering goods—from being waylaid by racketeers. Consequently, as *Enmons* held, it does not reach violence committed by striking energy workers (*i.e.*, "firing high-powered rifles at three Company transformers, draining the oil from a Company transformer, and blowing up a transformer substation owned by the Company," *id.* at 398, 401) that did not target the instrumentalities or movement of commerce.

True, the statute includes the verb "affects," but reading that word in isolation, as the circuit courts have done, is legal error. Whether a robbery "obstructs, delays, or affects" commerce is determined by examining all three verbs together, not homing in on the broadest one so it subsumes the other two. That rule of interpretation applies especially to words like "affect" whose meaning varies with context: "Under the familiar interpretive canon *noscitur a sociis*, 'a word is known by the company it keeps.' While 'not an inescapable rule,' this canon 'is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress.'" *McDonnell v. United States*, 136 S.Ct. 2355, 2368 (2016) (quoting *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961)).

In the Hobbs Act, the use of "obstructs" and "delays" as the first-listed verbs confirms that Congress was concerned with protecting the flow of commerce. *See Miles*, 122 F.3d at 245 (DeMoss, C.J., concurring) ("The phrase 'commerce or the movement of any article or commodity in commerce' is the object of the verbs 'obstructs, delays, or affects.'"). Specifically, Congress sought to protect free trade between states from the inefficiencies incurred through having to pay off local racketeers, particularly labor unions. "The legislative history of the Hobbs Act is replete with evidence that Congress passed the statute to combat highway robberies by labor union members which, at the rate of more than 1,000 per day, were having a considerable impact on interstate commerce. However, nothing in the legislative history of the Hobbs Act indicates that Congress was concerned with local robberies of retail establishments." *Hickman*, 179 F.3d at 244 (Higginbotham, C.J., dissenting) (citing *Miles*, 122 F.3d at 244 (DeMoss, C.J., concurring)).

Taylor can be read to posit that the Hobbs Act's wording could be disregarded because the Hobbs Act supposedly "exercise[s] the full measure of Congress's commerce power." 136 S.Ct. at 2081 (citing *Stirone v. United States*, 361 U.S. 212, 215 (1960)). From that premise, the Court reasoned that, because Congress subjected "the market for marijuana, including its intrastate aspects" to pervasive regulation, "a robber who affects or attempts to affect even the intrastate sale of marijuana grown within the State affects or attempts to affect commerce over which the United States has jurisdiction." *Id.* at 2081. *Taylor* thus understood *Stirone* to mean that the Hobbs Act reaches any robbery that Congress could conceivably reach under the Commerce Clause.

Justice Black's unanimous *Stirone* opinion, however, does not license ignoring the Hobbs Act's text and does not hold or even state that the Hobbs Act unleashes "the full measure of Congress's commerce power." *Id.* It asserted the more narrow *dictum* that the Hobbs Act "manifest[s] a purpose to use all the constitutional power Congress has *to punish interference with interstate commerce* by extortion, robbery or physical violence." 361 U.S. at 215 (emphasis added). That observation, which only tracks the statutory language, neither reveals the contours of that specific power nor suggests it is unbounded.

Like *Taylor* itself, *Stirone* expressly declined to find the limits of Congress' power "to punish interference with interstate commerce" and chose to decide the case on a more narrow basis. Nicholas Stirone, the influential president of a union council, extorted payments totaling $31,274 from William Rider, a Pennsylvania supplier of concrete for the construction of a steel mill in the state. "The evidence against petitioner was that he extorted 50 cents for each cubic yard of concrete ... under the threat that the payment was necessary to keep Mr.

Rider 'out of labor trouble' and 'to hold on to the contract.'" Brief for the United States, *Stirone*, 1959 WL 101621 at *3–*4 (12 Oct 1959). The trial court instructed the jury that "Stirone's guilt could be rested either on a finding that (1) sand used to make the concrete 'had been shipped from another state into Pennsylvania' or (2) 'Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce ... .'" 361 U.S. at 214. This Court unanimously agreed that Stirone's extortion had interfered with the movement of sand in interstate commerce. *Id.* at 215. The Court did not reach the "more difficult question" of "[w]hether prospective steel shipments from the new steel mill would be enough, alone, to bring this transaction under the Act ... ." *Id.* at 215.

Stirone's refusal to consider whether obstructing or delaying *prospective* commerce violates the Hobbs Act shows that the case did not hold that the statute goes as far as the Commerce Clause might conceivably allow. If the *Stirone* Court had determined that the Hobbs Act is as broad as possible, concluding that it reaches extortion interfering with a steel mill's prospective production would not have been "difficult" but inescapable. *See Southern Pacific Co. v. Gileo*, 351 U.S. 493, 498–99 (1956) (holding that Federal Employers' Liability Act protected workers injured on jobs that in any way furthered prospective interstate commerce). *Stirone*'s limited holding—that Stirone's extortion scheme was an attempt to obstruct existing, ongoing shipments of sand moving in interstate commerce—hews to the statutory text prohibiting obstructing or delaying the movement of goods in commerce:

> Had Rider's business been hindered or destroyed, interstate movements of sand to him would have slackened or stopped. The trial jury was entitled to find that commerce was saved from such a blockage by Rider's compliance with Stirone's coercive and illegal demands. It was to free commerce from such destructive burdens that the Hobbs Act was passed.

Stirone, 361 U.S. at 215. *Strinone* thus supports nothing more than that the Hobbs Act protects the instrumentalities and movement of commerce.

Despite its seemingly broad phrasing, the statutory text better supports a narrow interpretation. Fairly read in light of the usage conventions of the era, the act does not reach ordinary retail-store robberies. When the Hobbs Act was passed, "commerce" referred to the ongoing trading and shipping of goods, as distinguished from goods that have "come to rest within a state, being held there at the pleasure of the owner, for disposal or use ... ." *Independent Warehouses v. Scheele*, 331 U.S. 70, 82 (1947). Being "engaged in commerce" meant performing work "closely related to the interstate movement" of people and goods. *Overstreet v. North Shore Corp.*, 318 U.S. 125, 130 (1943).

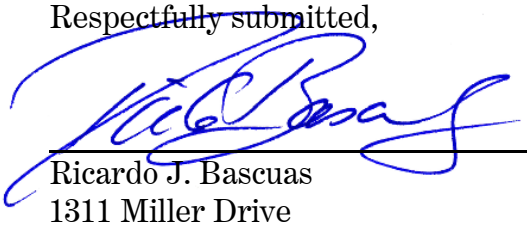
The act sought to protect national trade and the movement of goods from interference by racketeers. "A robbery that forces an interstate freeway to shut down thus may form the basis for a valid Hobbs Act conviction. So too might a robbery of a truckdriver who is in the course of transporting commercial goods across state lines." *Taylor*, 136 S.Ct. at 2085 (Thomas, J., dissenting). The statute was, therefore, correctly applied in, for example, *United States v. Prieto*, 232 F.3d 816 (CA11 2000), in which the defendants conspired to rob a UPS truck making deliveries. It was also correctly applied in *United States v. Gupton*, 495 F.3d 550 (CA5 1974), in which the defendants attempted to extort money from an airline by threatening to blow up an airplane. Conversely, the statute has no application in this case, which involves four retail-store robberies that targeted neither the instrumentalities nor the movement of commerce.

Prayer for Relief

The lower courts have ignored *Taylor*'s intimations that the Hobbs Act does not make every retail-store robbery a federal crime and will not reconsider that view unless this Court requires them to do so. In this case, Herrera primarily relied on *Taylor* in both his initial and reply briefs to the court of appeals. Nonetheless, the Eleventh Circuit ignored *Taylor* and mechanically applied its older precedents to find jurisdiction, just as the other circuits have disregarded *Taylor*'s implications in similar cases. As *Hill*, *supra*, shows, *Taylor*'s lack of a limiting principle only encourages the lower courts to take an unbounded view of federal criminal jurisdiction not only in Hobbs Act cases, but under other statutes as well.

WHEREFORE this Court should grant this petition for a writ of certiorari to the U.S. Court of Appeals for the Eleventh Circuit and delineate the scope of the Hobbs Act.

Respectfully submitted,



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